



NDDC Amendment Act: Was there an amendment?



NDDC
Niger Delta Development Commission
...Determined To Make A Difference



On 20 December 2017, the National Assembly's passage of a Bill to amend the Niger Delta Development Commission (Establishment, Etc.) Act, 2000 (NDDC Act)¹ made news headlines. The Bill received Presidential Assent nine days later, and thus became the Niger Delta Development Commission (Establishment, Etc.) (Amendment) Act (NDDC Amendment Act).

At the early stages of the amendment process, the NDDC Act Amendment Bill appeared to have been conceptualized as a corrective piece of legislation to redress perceived lapses in the NDDC Act. Now fully enacted, however, the NDDC Amendment Act contains just one substantive provision that purports to do no more than amend a single sub-section of the NDDC Act. It is unsurprising, therefore, that in the wake of its entry into force, queries as to whether the NDDC Amendment Act has changed anything in the NDDC Act are rife.

¹ Cap N86 Laws of the Federation of Nigeria, 2004

Historical context

The Niger-Delta region,² almost perennially, witnesses restiveness and agitations over resource control, ostensibly in protest of perceived neglect by the Federal Government (FG) and sustained environmental degradation arising from oil and gas exploration activities.

To curb the violence and tackle the ecological problems in the Niger-Delta, the Niger Delta Development Commission (NDDC) was established in 2000 pursuant to the NDDC Act. The NDDC is statutorily charged with the responsibility of formulating policies and guidelines for the development and rehabilitation of the region. It monitors the activities of oil producing and gas processing companies operating in the Niger-Delta area to ensure compliance with applicable laws and regulations and prevent pollution.

Perceived Defects of the NDDC Act.

Since its establishment by the NDDC Act, the NDDC has received some criticisms particularly with respect to its funding and projects. The NDDC's operations are funded from multiple sources. Of relevance in this regard is section 14(2)(a) of the NDDC Act, which obligates the FG to remit to the NDDC a sum equivalent to 15 per cent of the total monthly statutory allocation due to the NDDC member states³ from the Federation Account. Sections 14(2)(b) and (c) also provide for the remittance, to the NDDC, of 3 per cent of the total annual budget of oil producing and gas processing companies operating in the Niger-Delta area and 50 per cent of monies due to NDDC member-states from the ecological fund. It appears, however, that compliance with these provisions have not been optimal,⁴ the trend of non-compliance being apparently exacerbated by the fact that the NDDC has no statutory powers to compel the prompt release of funds accruing to it or otherwise impose penalties for non-compliance. Accordingly, stakeholders in the NDDC often demanded a reform of the NDDC Act with a view primarily to strengthening its provisions to ensure the prompt remittance of funds that the NDDC is statutorily entitled to, as well as imposing penalties for delay or default, among other things.

The case for amendment of the NDDC Act also gained significant traction in the wake of the Court of Appeal's decision in *Niger Delta Development Commission v Nigeria Liquefied National Gas Limited* (NDDC v NLNG).⁵ The NDDC, in an attempt to enforce section 14(2)(b) of the NDDC Act against NLNG, had sought court orders to compel NLNG – in the light of its persistent refusal – to remit 3 per cent of its annual budget to the NDDC as contemplated in section 14(2)(b). NLNG, in its defence, argued that i.) it

² The Niger Delta region comprises the oil mineral producing areas of Nigeria

³ The member states include Abia, Akwa-Ibom, Bayelsa, Cross-River, Delta, Edo, Imo, Ondo and Rivers states.

⁴ It has been reported that the FG owes the NDDC the sum of N 1.8 trillion naira, see

<https://www.premiumtimesng.com/regional/south-south-regional/241888-nigerian-govt-owes-nddc-n1-8-trillion-official.html>

⁵ (2011) 4 TLRN

is not a ‘gas processing company’ within the meaning and contemplation of the NDDC Act; ii.) it is wholly exempt from any new taxes, dues or laws enacted after 1993, except those generally applicable to *all* companies in Nigeria⁶ and iii.) it has no “total annual budget”⁷ but rather a project-based operational budget. Although the Court upheld NDDC’s argument that NLNG is a gas processing company, it ultimately decided in favour of NLNG, having found merit in the argument that NLNG has no annual budget.

As a fall out of the *NDDC v NLNG* decision, a Bill which proposes amendments to the NLNG Act has remained pending before the National Assembly amid intense debates and lobbying whilst the NDDC Act, as aforesaid, has supposedly been amended by the NDDC (Amendment) Act.

Proposed Amendments of the NDDC Act

A review of the report prepared by the Senate Committee in respect of the Bill for the amendment of the NDDC Act reveals the following proposed substantive amendments:

- 1) Section 2(1)(b) redrafted to reflect that a person selected to represent each of the NDDC states on the governing board is required to come from an oil producing local government area. This was indented to clear the ambiguity as to the meaning of the phrase ‘oil producing area’.
- 2) Sections 2(1)(e) and 2(1)(f) redrafted to clarify that ‘persons’ refer to permanent secretaries who are eligible for appointment to represent the ministries of finance and environment in the governing board.
- 3) Section 4 redrafted to reflect that the office of the Chairman shall rotate amongst the oil producing local government areas of the member states.
- 4) The words ‘same interest’ as used in section 5(3) to be replaced with the phrase ‘same local government area or state’.
- 5) Section 14 redrafted to provide for the full and prompt remittances of funds from the listed sources currently stipulated under the NDDC Act. Particularly, section 14(2) is redrafted to ensure that the contributions due from the Federal Government and the ecological fund are paid directly to the NDDC from the Federation Account. In addition, monies realized from the Value Added Tax

⁶ Pursuant to section 9 and paragraphs 3 and 6 of the Second Schedule to the NLNG’s own establishment statute, the *Nigeria LNG (Fiscal Incentive, Guarantees and Assurances) Act* Cap 87 LFN 2004 (previously Decrees 39 of 1990 and 113 of 1993)

⁷ this expression, according to NLNG, being a reference to the annual Work Programmes and Budgets used by E & P companies in the oil and gas sector

deductions from contracts awarded by the NDDC are to be used to execute specific projects.

A new subsection was also proposed to be inserted in section 14 which clearly stipulates that no oil producing company or gas processing company operating in the Niger-Delta area is exempted from making the statutory contribution to the NDDC irrespective of contrary provisions in any other statute.⁸ Section 14 was to be further fortified with the inclusion of a disclosure requirement imposed on all oil producing and gas processing companies to disclose to the NDDC their total annual budget before 31 March of each year. The aim of this subsection is to monitor compliance of the remittance of 3 per cent of the total annual budget by oil producing and gas processing companies operating onshore and offshore in the Niger-Delta area.

- 6) Impressively, the draft bill introduced a penalty of 10 per cent per annum on the amount due where an oil producing company or a gas processing company either defaults or delays in making the statutory contributions to the NDDC.
- 7) The words, "*not later than 30th September*", in Section 18(1) substituted with the words, "*within three months of signing into law the budget of the Federation*". This was intended to get rid of all bureaucracies and bottlenecks, and ensure that the NDDC carries out its functions efficiently.

Overview of the NDDC Amendment Act

No provision of the 3-section NDDC Amendment Act reflects any of the recommended amendments contained in the initial draft Bill referenced in the report of the Senate Committee. It is probably fair to conclude, therefore, that the NDDC Amendment Act failed to achieve any of the objectives set out in the referenced report of the Senate Committee.

Sections 1 and 2 of the NDDC Amendment Act, merely provide, respectively, that the NDDC Act is amended and the short title of the NDDC Amendment Act. The only amendment that the NDDC Amendment Act purports to make is in respect of section 14(2)(b) of the NDDC Act regarding the funding of the NDDC. For a comparative analysis, the relevant provisions of both the NDDC Act and the NDDC Amendment Act are reproduced below, with focus on the italicised portions:

⁸ This provision appears to target the Nigerian Liquefied Natural Gas company (NLNG) specifically because of the NDDC v NLNG decision of the Court of Appeal which is discussed above.

Section 14 (2)(b) of the NDDC Act:

“There shall be paid and credited to the fund established pursuant to section (1) of this section:

(b) 3 per cent of the total annual budget of any oil producing company operating onshore and offshore, in the Niger-Delta area; including gas processing companies.”

Section 2 of the NDDC Amendment Act:

“Section 14(2) of the [NDDC Act] is amended by substituting for paragraph (b), a new paragraph (b):

(b) 3 per cent of:

(i) the total annual budget of any oil producing company operating onshore and offshore, in the Niger Delta area; and

(ii) the total annual budget of any gas processing company in the Niger Delta area, excluding the cost of feed gas.”

Evidently, Section 14 (2)(b) of the NDDC Amendment Act essentially restated the provisions of the same section of the NDDC Act, albeit in an *itemized* structure. This much is confirmed by the fact that the NDDC Act itself already mentioned gas processing companies as part of the contributors to the NDDC’s funding. In practical terms, therefore, the only difference between the language of section 14(2)(b) of the NDDC Act and section 2 of the NDDC Amendment Act is that the latter excludes, for the purposes of compliance, the cost of feed gas in the computation of the total annual budget of a gas processing company.

Beyond this, it is difficult to spot a difference that the NDDC Amendment Act has made to the NDDC Act. Significantly, the NDDC Amendment Act has in no way engaged, to say nothing of addressing, any of the issues that arose in the *NDDC v NLNG* case.

Conclusion

Largely, the NDDC Amendment Act appears not to be anything more than a rehash of section 14(2)(b) of the NDDC Act. For a statute that had promised far-reaching impact and largely enjoyed popular support when it was first introduced as a Bill, it remains to be seen how it could possibly be justified as an improvement on the NDDC Act.

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